

FILED

Jun 30, 2022

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIADWAYNE S. MONTGOMERY; CDCR# K-14298

Name and Prisoner/Booking Number

KERN VALLEY STATE PRISON

Place of Confinement

3000 WEST CECIL AVE./P.O. BOX 5103

Mailing Address

DELANO, CALIFORNIA 93216

City, State, Zip Code

(Failure to notify the Court of your change of address may result in dismissal of this action.)

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

DWAYNE S. MONTGOMERY

(Full Name of Plaintiff)

Plaintiff,

v.

(1) M. CULUM, CORRECTIONS OFFICER

(Full Name of Defendant)

(2) J. GAMEZ, CORRECTIONS OFFICER(3) M. PESCE, CORRECTIONS OFFICER(4) B. KELLY, CORRECTIONS OFFICER

Defendant(s).

☒ Check if there are additional Defendants and attach page 1-A listing them.

1:22-cv-00802-BAM-(PC)

CASE NO. _____

(To be supplied by the Clerk)

DEMAND FOR JURY TRIAL

CIVIL RIGHTS COMPLAINT
BY A PRISONER☒ Original Complaint☐ First Amended Complaint☐ Second Amended Complaint

A. JURISDICTION

1. This Court has jurisdiction over this action pursuant to:

☒ 28 U.S.C. § 1343(a); 42 U.S.C. § 1983☐ 28 U.S.C. § 1331; Bivens v. Six Unknown Federal Narcotics Agents, 403 U.S. 388 (1971).☐ Other: _____2. Institution/city where violation occurred: MULE CREEK STATE PRISON

B. DEFENDANTS

1. Name of first Defendant: M. GULUM. The first Defendant is employed as:
CORRECTIONS OFFICER at MULE CREEK STATE PRISON
(Position and Title) (Institution)
2. Name of second Defendant: J. GAMEZ. The second Defendant is employed as:
CORRECTIONS OFFICER at MULE CREEK STATE PRISON
(Position and Title) (Institution)
3. Name of third Defendant: M. PESCE. The third Defendant is employed as:
CORRECTIONS OFFICER at MULE CREEK STATE PRISON
(Position and Title) (Institution)
4. Name of fourth Defendant: B. KELLY. The fourth Defendant is employed as:
CORRECTIONS OFFICER at MULE CREEK STATE PRISON
(Position and Title) (Institution)

If you name more than four Defendants, answer the questions listed above for each additional Defendant on a separate page.

C. PREVIOUS LAWSUITS

1. Have you filed any other lawsuits while you were a prisoner? ☒ Yes ☐ No
2. If yes, how many lawsuits have you filed? _____. Describe the previous lawsuits:
 - a. First prior lawsuit:
 1. Parties: Dwayne Montgomery v. C. Noll, et al.,
 2. Court and case number: C-06-4407-ST (N.D. Cal.)
 3. Result: (Was the case dismissed? Was it appealed? Is it still pending?) Settlement
 - b. Second prior lawsuit:
 1. Parties: Dwayne Montgomery v. Sanchez
 2. Court and case number: 1:11-cv-00961 (E.D. Cal.)
 3. Result: (Was the case dismissed? Was it appealed? Is it still pending?) Dismissed
 - c. Third prior lawsuit:
 1. Parties: Dwayne Montgomery v. Cox, et al.,
 2. Court and case number: 2:19-cv-02081-MCE-KJN (E.D. Cal.)
 3. Result: (Was the case dismissed? Was it appealed? Is it still pending?) Settlement

If you filed more than three lawsuits, answer the questions listed above for each additional lawsuit on a separate page.

FULL NAME OF DEFENDANTS--Cont.

- (5) S. SERGENT, CORRECTIONS OFFICER
- (6) S. HURTADO, CORRECTIONS OFFICER
- (7) C. MOTT, CORRECTIONS OFFICER
- (8) D. CLAY, CORRECTIONS SERGEANT
- (9) J. QUIRING, CORRECTIONS LIEUTENANT
- (10) H. MOSELEY, ACTING, CHIEF DEPUTY WARDEN
- (11) B. HOLMES, CHIEF DEPUTY WARDEN
- (12) P. COVELLO, WARDEN

B. DEFENDANTS -- Cont.

Name of fifth Defendant: S. SERGENT. The fifth Defendant is employed as: CORRECTIONS OFFICER, at MULE CREEK STATE PRISON.

Name of sixth Defendant: S. HURTADO. The sixth Defendant is employed as: CORRECTIONS OFFICER, at MULE CREEK STATE PRISON.

Name of seventh Defendant: C. MOTT. The seventh Defendant is employed as: CORRECTIONS OFFICER, at MULE CREEK STATE PRISON.

Name of eighth Defendant: D. CLAY. The eighth Defendant is employed as: CORRECTIONS SERGEANT, at MULE CREEK STATE PRISON.

Name of ninth Defendant: J. QUIRING. The ninth Defendant is employed as: CORRECTIONS LIEUTENANT, at MULE CREEK STATE PRISON.

Name of tenth Defendant: H. MOSELEY. The tenth Defendant is employed as: ACTING CHIEF, DEPUTY WARDEN, at MULE CREEK STATE PRISON.

Name of eleventh Defendant: B. HOLMES. The eleventh Defendant is employed as: CHIEF, DEPUTY WARDEN, at MULE CREEK STATE PRISON.

Name of twelfth Defendant: P. COVELLO. The twelfth Defendant is employed as: WARDEN, at MULE CREEK STATE PRISON.

C. PREVIOUS LAWSUITS

d) Fourth prior lawsuit:

1. Parties: Dwayne Montgomery v. Sanchez et al.,
2. Court and case number: 1:13-cv-00247 (E.D. Cal.)
3. Results: Dismissed.

e) Fifth prior lawsuit:

1. Parties: Dwayne Montgomery v. Sam Wong, et al.,
2. Court and case number: 2:20-cv-01515 (E.D. Cal.)
3. Results: Voluntary dismissal Rule 41 FRCP.

f) sixth prior lawsuit:

1. Parties: Dwayne S. Montgomery v. K. Kirkendall, et al.,
2. Court and case number: 2:22-cv-00127 (E.D. Cal.).
3. Results: Amended Complaint, pending.

D. CAUSE OF ACTION

CLAIM I

1. State the constitutional or other federal civil right that was violated: RETALIATION, VIOLATION OF FIRST and FOURTEENTH AMENDMENT RIGHT TO THE U.S. CONSTITUTION

2. **Claim I.** Identify the issue involved. Check **only one**. State additional issues in separate claims.

- | | | | |
|--|---|---|---|
| <input type="checkbox"/> Basic necessities | <input type="checkbox"/> Mail | <input type="checkbox"/> Access to the court | <input type="checkbox"/> Medical care |
| <input type="checkbox"/> Disciplinary proceedings | <input type="checkbox"/> Property | <input type="checkbox"/> Exercise of religion | <input checked="" type="checkbox"/> Retaliation |
| <input type="checkbox"/> Excessive force by an officer | <input type="checkbox"/> Threat to safety | <input type="checkbox"/> Other: _____ | |

3. **Supporting Facts.** State as briefly as possible the FACTS supporting Claim I. Describe exactly what **each Defendant** did or did not do that violated your rights. State the facts clearly in your own words without citing legal authority or arguments.

SEE ATTACHED COMPLAINT

4. **Injury.** State how you were injured by the actions or inactions of the Defendant(s).

SEE ATTACHED COMPLAINT

5. **Administrative Remedies:**

- a. Are there any administrative remedies (grievance procedures or administrative appeals) available at your institution? ☒ Yes ☐ No
- b. Did you submit a request for administrative relief on Claim I? ☒ Yes ☐ No
- c. Did you appeal your request for relief on Claim I to the highest level? ☒ Yes ☐ No
- d. If you did not submit or appeal a request for administrative relief at any level, briefly explain why you did not. SEE APPEALS LOG# 000000000969 ("969"); 000000017145

CLAIM II

1. State the constitutional or other federal civil right that was violated: UNNECESSARY/EXCESSIVE USE OF FORCE, RESULTING IN GREAT BODILY INJURY AND IN VIOLATION OF EIGHTH AND FOURTEENTH

AMENDMENT RIGHTS

2. **Claim II.** Identify the issue involved. Check **only one**. State additional issues in separate claims.

- | | | | |
|---|---|---|---------------------------------------|
| <input type="checkbox"/> Basic necessities | <input type="checkbox"/> Mail | <input type="checkbox"/> Access to the court | <input type="checkbox"/> Medical care |
| <input type="checkbox"/> Disciplinary proceedings | <input type="checkbox"/> Property | <input type="checkbox"/> Exercise of religion | <input type="checkbox"/> Retaliation |
| <input checked="" type="checkbox"/> Excessive force by an officer | <input type="checkbox"/> Threat to safety | <input type="checkbox"/> Other: _____ | |

3. **Supporting Facts.** State as briefly as possible the FACTS supporting Claim II. Describe exactly what **each Defendant** did or did not do that violated your rights. State the facts clearly in your own words without citing legal authority or arguments.

SEE ATTACHED COMPLAINT

4. **Injury.** State how you were injured by the actions or inactions of the Defendant(s).

SEE ATTACHED COMPLAINT

5. **Administrative Remedies.**

- a. Are there any administrative remedies (grievance procedures or administrative appeals) available at your institution? ☒ Yes ☐ No
- b. Did you submit a request for administrative relief on Claim II? ☒ Yes ☐ No
- c. Did you appeal your request for relief on Claim II to the highest level? ☒ Yes ☐ No
- d. If you did not submit or appeal a request for administrative relief at any level, briefly explain why you did not. _____

SEE APPEALS LOG# 00000000969 ("969"); 000000017145

CLAIM III

1. State the constitutional or other federal civil right that was violated: CONSPIRACY TO COMMIT DUE PROCESS RIGHTS. VIOLATION OF FIFTH and FOURTEENTH AMENDMENT OF U.S. CONSTITUTION

2. **Claim III.** Identify the issue involved. Check **only one**. State additional issues in separate claims.

- | | | | |
|--|---|---|---------------------------------------|
| <input type="checkbox"/> Basic necessities | <input type="checkbox"/> Mail | <input type="checkbox"/> Access to the court | <input type="checkbox"/> Medical care |
| <input type="checkbox"/> Disciplinary proceedings | <input type="checkbox"/> Property | <input type="checkbox"/> Exercise of religion | <input type="checkbox"/> Retaliation |
| <input type="checkbox"/> Excessive force by an officer | <input type="checkbox"/> Threat to safety | <input checked="" type="checkbox"/> Other: <u>CONSPIRACY and DENIAL OF DUE PROCESS.</u> | |

3. **Supporting Facts.** State as briefly as possible the FACTS supporting Claim III. Describe exactly what **each Defendant** did or did not do that violated your rights. State the facts clearly in your own words without citing legal authority or arguments.

SEE ATTACHED COMPLAINT

4. **Injury.** State how you were injured by the actions or inactions of the Defendant(s).

SEE ATTACHED COMPLAINT

5. **Administrative Remedies.**

- Are there any administrative remedies (grievance procedures or administrative appeals) available at your institution? ☒ Yes ☐ No
- Did you submit a request for administrative relief on Claim III? ☒ Yes ☐ No
- Did you appeal your request for relief on Claim III to the highest level? ☒ Yes ☐ No
- If you did not submit or appeal a request for administrative relief at any level, briefly explain why you did not. _____

SEE APPEALS LOG# 000000000969 ("969"); 000000017145

If you assert more than three Claims, answer the questions listed above for each additional Claim on a separate page.

D. CAUSE OF ACTION

CLAIM IV

1. State the constitutional or other federal civil right that was violated: ~~VIOLATION OF CIVIL RIGHTS DUE PROCESS--DENIED POST-DEPRIVATION OF REMEDIES AND DESTRUCTION OF PERSONAL PROPERTY~~

2. **Claim I.** Identify the issue involved. Check **only one**. State additional issues in separate claims.

- | | | | |
|--|--|--|---------------------------------------|
| <input type="checkbox"/> Basic necessities | <input type="checkbox"/> Mail | <input type="checkbox"/> Access to the court | <input type="checkbox"/> Medical care |
| <input type="checkbox"/> Disciplinary proceedings | <input checked="" type="checkbox"/> Property | <input type="checkbox"/> Exercise of religion | <input type="checkbox"/> Retaliation |
| <input type="checkbox"/> Excessive force by an officer | <input type="checkbox"/> Threat to safety | <input checked="" type="checkbox"/> Other: <u>DESTROYED PERSONAL LEGAL BOOKS</u> | |

3. **Supporting Facts.** State as briefly as possible the FACTS supporting Claim I. Describe exactly what **each Defendant** did or did not do that violated your rights. State the facts clearly in your own words without citing legal authority or arguments.

SEE ATTACHED COMPLAINT

4. **Injury.** State how you were injured by the actions or inactions of the Defendant(s).

SEE ATTACHED COMPLAINT

5. **Administrative Remedies:**

- Are there any administrative remedies (grievance procedures or administrative appeals) available at your institution? ☒ Yes ☐ No
- Did you submit a request for administrative relief on Claim I? ☒ Yes ☐ No
- Did you appeal your request for relief on Claim I to the highest level? ☒ Yes ☐ No
- If you did not submit or appeal a request for administrative relief at any level, briefly explain why you did not. SEE APPEALS LOG# 000000054398 and LOG# 000000010465

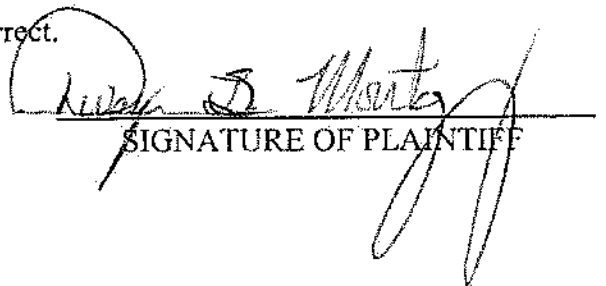
E. REQUEST FOR RELIEF

State the relief you are seeking:

1. Compensatory general and special damages in an amount in accordance with proof;
2. Punitive damages against each of the individual defendants in an amount sufficient to punish and make examples of said defendants, in order to deter others from engaging in similar misconduct;
3. expungement of Rule Violation Report Log Numbers 000000007003864 and 000000007003865; and
4. Such other relief as the Court deems proper inn this matter.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 27, 2022
DATE


SIGNATURE OF PLAINTIFF

(Name and title of paralegal, legal assistant, or
other person who helped prepare this complaint)

(Signature of attorney, if any)

(Attorney's address & telephone number)

ADDITIONAL PAGES

All questions must be answered concisely in the proper space on the form. If you need more space you may attach more pages, but you are strongly encouraged to limit your complaint to twenty-five pages. If you attach additional pages, be sure to identify which section of the complaint is being continued and number all pages. Remember, there is no need to attach exhibits to your complaint.

State of California Department of
Corrections and Rehabilitation
Kern Valley State Prison
DWAYNE S. MONTGOMERY, Plaintiff
CDCR Registry No. K-14298
3000 West Cecil Avenue
Post Office Box 5103 -- FCB4-121
Delano, California 93216-6000
In Propria Persona

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DWAYNE S. MONTGOMERY,
Plaintiff,

v.

M. CULUM, J. GAMEZ, C. MOTT,
M. PESCE, B. KELLY, D. CLAY,
S. SERGENT, S. HURTADO,
J. QUIRING, B. HOLMES,
H. MOSELEY and P. COVELLO,
WARDEN.
Defendants.

Case No. _____

COMPLAINT FOR DAMAGES
UNDER THE CIVIL RIGHTS ACT

1. VIOLATION OF CIVIL RIGHTS
42 U.S.C. § 1983-RETALIATION

2. VIOLATION OF CIVIL RIGHTS
42 U.S.C. § 1983 UNNECESSARY &
EXCESSIVE USE OF FORCE RESULT-
ING IN GREAT BODILY INJURIES

3. VIOLATION OF CIVIL RIGHTS
42 U.S.C. § 1983-CIVIL CONSPIR-
ACY UNDER FEDERAL LAW

4. VIOLATION OF CIVIL RIGHTS
DUE PROCESS & DENIED POST-DE-
PRIVATION OF REMEDIES

COME NOW, DWAYNE S. MONTGOMERY ("hereinafter Plaintiff"), and for cause of
action against the Defendants, and each of them, complaint allege as follows:

INTRODUCTION

1. Plaintiff brings this civil action ("lawsuit") pursuant to 42 U.S.C.
§ 1983, and the First, Fifth, Eighth and Fourteenth Amendment of the Constitut
-ion, and the law of the States of California, for subjecting him, in violation
of his civil rights to be free from retaliation for filing grievances, making

1 complaints, pursuing lawsuits, or engaging in other activities protected by the
2 Constitution; to be free from the unnecessary or excessive use of force; and
3 to be free from internal administrative conspiracy to deny pre or post-depri-
4 vation of remedies, of life, liberty and property, and the equal protection
5 under due process of law.

6
7 JURISDICTION AND VENUE

8 2. This action is brought pursuant to 42 U.S.C. § 1983, to redress the de-
9 privation under the color of law, and of rights secured by the Constitution of
10 the United States and Act of Congress. This Court has jurisdiction to hear and
11 grant Plaintiff's request for relief.

12 3. Venue lies in the Eastern District of California, the judicial district
13 in which the claims arose pursuant to 28 U.S.C. § 1391 (1)-(2). Plaintiff re-
14 spectfully request a jury trial on the merits of the allegations giving rise
15 to this action.

16
17 EXHAUSTION OF PROCEDURAL ADMINISTRATIVE REMEDIES

18 4. Plaintiff submitted multiple inmate grievances ("STAFF MISCONDUCT COM-
19 PLAINT"), and medical complaints in this matter, beginning on June 2, 2020,
20 immediately following the battery/assault committed against [him] and the fab-
21 rication of fraudulent claims alleged against the Plaintiff, as the defendants
22 falsified and exaggerated their Rule Violation Report(s) ("RVR"), and their
23 CRIME/INCIDENT REPORT(S), to cover-up the retaliatorial misconduct and the un-
24 necessary and excessive use of force upon the Plaintiff's person, leading to
25 false criminal charges being filed (and picked up by the DA No. 20-CR-29878),
26 against him in state court for battery on a peace officer; twice. See the
27 following appeals: Log No. 000000000969; 000000017145; 000000054398 GRANTED
28

at the Director's level of review and 0000000010465, in which it had been re-
 turned to MCSP administrative officials, with specific instruction as how they
 were to proceed with the ongoing due process investigation. However, this level
 of the procedural due process was infringed upon by prison officials when [they]
 opened grievance Log No. 48927, and assigned a Confidential Institutional In-
 quiry Report (CIIR) for the following allegations. Plaintiff was not interviewed
 at this stage of the investigation, nor did he receive the polygraph test as
 he had requested be performed upon him and all staff members that filed any re-
 -port about the incident. Plaintiff was not interviewed by an Internal Affairs
 Investigator (IA) or from the Office of Inspector Generals (OIG).

PARTIES

5. Dwayne S. Montgomery ("Plaintiff") was at all relevant times, a prisoner
 of the State of California, in the custody of California Department of Correct-
 -ions and Rehabilitation ("CDCR") at Mule Creek State Prison ("MCSP").

6. On information and belief, defendant M. Culum ("c/o Culum") was, at all
 relevant times, employed by CDCR as a Corrections Officer ("c/o"), assigned to
 MCSP. At all times mentioned, defendant c/o Culum was acting under the color
 of law, and is being sued in his individual capacity.

7. On information and belief, defendant J. Gamez ("c/o Gamez") was, at all
 relevant times, employed by CDCR as a c/o, and assigned to MCSP. At all times
 mentioned, defendant c/o Gamez, was acting under the color of law, and is being
 sued in her individual capacity.

8. On information and belief, defendant M. Pesce (c/o Pesce) was at all re-
 levant times, employed by CDCR as a c/o, assigned to MCSP. At all times ment-
 -ioned, defendant c/o Pesce was acting under the color of law, and is being sued
 in his individual capacity.

sued in his individual capacity..

9. On information and belief, defendant B. Kelly ("c/o Kelly") was, at all times relevant, employed as a c/o, assigned to MCSP. At all times mentioned, defendant c/o Kelly was acting under the color of law, and is being sued in his individual capacity.

10. On information and belief, defendant S. Sergeant ("c/o Sergeant") was, at all times relevant, employed by CDCR as a c/o, assigned at MCSP. At all times mentioned, defendant c/o Sergeant was acting under the color of law, and is being sued in her individual capacity.

11. On information and belief, defendant S. Hurtado ("c/o Hurtado") was, at all times relevant, employed as a c/o, assigned at MCSP. At all times mentioned, defendant c/o Hurtado was acting under the color of law, and is being sued in her individual capacity.

12. On information and belief, defendant C. Mott ("c/o Mott") was, at all times relevant, employed by CDCR as a c/o, assigned at MCSP. At all times mentioned, defendant c/o Mott was acting under color of law, and is being sued in his individual capacity.

13. On information and belief, defendant D. Clay was, at all relevant times, employed as a Correctional Sergeant ("c/o Sgt.") was, at all times relevant, employed at MCSP. At all times mentioned, defendant c/o Clay was acting under color of law, and is being sued in his individual capacity.

14. On information and belief, defendant J. Quiring ("Lt. Quiring") was, at all relevant times, employed by CDCR as a Corrections Lieutenant ("Lt") was, at all times mentioned, defendant Lt. Quiring was acting under the color of law, and is being sued in his individual capacity and official capacity.

15. On information and belief, defendant H. Moseley ("def. Moseley") was, at all relevant, employed by CDCR as Chief, Deputy Warden ("CDW") was, at all time.

mentioned defendant Chief, Deputy Warden was acting under color of law, and is being sued in his individual and official capacity.

16. On Information and belief, defendant B. Holmes ("def. Holmes") was, at all relevant times, employed by CDCR as the Associate Chief Deputy Warden ("ACDW") was, at all times mentioned, def. Holmes was acting under the color of law, and is being sued in his individual and official capacity.

17) On information and belief, defendant P. Covello ("def. Covello") was, at all relevant times, employed by CDCR as the Warden of KVSP ("the Warden") was, at all relevant times, employed by CDCR as the Warden. At all times mentioned, Warden Covello, was acting under the color of law, and is being sued in his individual and official capacity.

PRELIMINARY ALLEGATIONS

18.) At all times relevant to the facts alleged herein, defendants were duly appointed, qualified and acting officers, employees, and/or agents of CDCR, employed as such by CDCR, and acting within the courses and scope of their employment and/or agency and under the color of state law. Each of the defendants caused and is responsible for the unlawful conduct and resulting by inter alia, personally participated in the conduct, or acting jointly and in concern with others who did so by authorizing, acquiescing, condoning, acting omitting or failing to take actions to prevent the unlawful conduct by promulgating policies and procedures pursuant to which the unlawful conduct occurred; by failing and refusing, with deliberate indifference to Plaintiff's rights, to initiate and maintain adequate supervision, security, training, compliance with responsibilities and duties, and staffing; by failing to maintain proper adequate policies, procedures and protocols; and by ratifying and condoning the unlawful conduct performed by agents and correctional officers and employees under their directions

1 and control.

2 19.. Whenever and wherever references is made in this complaint to any act by
3 defendants, such allegations and references shall be deemed to mean the acts
4 and failure to act, of each defendant, individually, jointly and in concert,
5 causing some overt acts, done in the furtherance of the conspiracy which result
6 -ed in the deprivation of [Plaintiff's] constitutional rights.
7

8 FACTUAL ALLEGATIONS

9 20.. At all times herein, Plaintiff was incarcerated at MCSP. Plaintiff was
10 covertly targeted by correctional staff and retaliated against for filing claims
11 against prison staff (officials) and helping other inmates do so, which is a
12 protected activity, as it was an exercise of his right to petition the govern-
13 ment for redress of grievances under the First Amendment.
14

15 21. On June 1, 2020, defendant c/o Pesce, illegally confiscated personal
16 clothing items belonging to the plaintiff. When Plaintiff requested that his
17 property be returned, defendant Pesce stated: "You can't have it back, next
18 time don't leave your shit on my [dayroom] benches"! I then asked defendant
19 Pesce to issue [me] a property confiscation receipt (which was CDCR's policy).
20 Again, c/o Pesce refused to comply with my request, and would not issue me a
21 receipt for the confiscated property.
22

23 22.. Plaintiff then requested to speak with the watch Sergeant (def. Clay),
24 in which c/o Pesce responded: "No take it back to your cell"! I informed c/o
25 Pesce that I had a right to speak with his supervisor, and that he couldn't deny
26 me my right to ascertain redress to a grievance I'm having with a staff member.
27

28 23. Pesce instructed me to return to my cell, again. After refusing to do so,
29 I voluntarily put my hands behind my back and submitted to be handcuffed. Then
30

1 demanded to speak with the sergeant.

2 24. Def. Pesce called for staff assistance on his security radio, for a poss-
3 ible hostile situation.

4 25. Def. Kelly and def. Sergeant responded to the call. Upon their arrival to
5 building 2, def. Kelly spoke briefly with def. Pesce, then approached me and
6 ordered me to get up and take it to my cell. I again refused to comply with
7 that command. Def. Kelly reached down and pick me up, I crossed my legs into
8 and indian sitting position, making it difficult to be picked up. I again stated
9 very loudly, I want to talk to the sereant, I have a right to talk to the ser-
10 geant!

11 26. At that point def. Kelly became very angry, and said out loud: "He spit on
12 me... did you see that, (looking at Pesce and Sergeant), he spit on me!" After
13 hearing protest from more than a dozen inmates that were presen in the dayroom
14 participating in recreation, def. Kelly realized that his attempt to creat a
15 false battery against me, once again, took me by the left bicep, and Pesce
16 took hold of my right bicep, and simultaneously started dragging me across the
17 dayroom floor, moving towards my cell. I swung my legs beneath me to bring them
18 to the front of my body; I place my left foot firmly on the floor in front of
19 me, causing both defs. to abruptly stop. def. Kelly attempted to yank me for-
20 ward, causing def. Pesce to lose his footing, causing him and I to fall forward.

21 27. As we were going down, I felt def. Kelly place his right hand onto my
22 shoulder and bring me down more forcefully, causing my head to be slammed into
23 the floor. I was handcuffed behind my back, and was unable to break the fall in
24 any way. I became disoriented. The next thing I realized, I was being handled
25 very aggressively by Kelly and Pesce; Kelly looked at Pesce and stated: " Now
26 it's a battery, and Pesce stated, "yes it is".
27

28. After def. Sergeant had put ankle restraints on me, she was holding the

chain part in her hand, and def. Culum entered the housing unit, and immediately took the chain from def. Sergeant's hand, ~~crossed~~ my feet over one another then slammed his left knee in the center of my crossed feet and drove them into my buttocks as forcefully as he could. He then took both of my shoes from my feet and threw them across the dayroom.

29. Def. Sergeant ("Sgt"), Clay entered the housing unit, and instructed def. Culum and def. Gamez to escort me to the facility-A program office. Plaintiff was placed into a wheelchair and escorted to the program office, where he was placed in a holding cage.

30. def. Gamez removed the restraints from my feet and hands. Def. Culum ordered me to remove all my clothing. At this point I'm scared. I did not even turn around to look at him. I simply refused to follow his instructions. I said "I'm not taking anything off". The handcuff was put back onto my wrist.

31. Def. Gamez, then walked away, to retrieve a pair of scissors. At this time, def. Culum stated: "If you give me any more problems, I'm gonna fuck you up, nigger!"

32. Without thinking, Plaintiff stated to Culum: "you ain't gonna do shit to me!" Abruptly, def. Culum immediately yanked me from the holding cage, swung me 180° and slammed my face straight into the wall, causing me to see stars, the next thing I felt was def. Culum smashing his left foot into my right foot with all of his body weight, causing a great amount of pain to shoot through my foot and body! Def. Culum lifts me up off of my feet, and slams me to the floor very hard, and brought his full body weight down into the my back. He then puts his left knee into my back, then lean forward, using his right foot as leverage he grips my shirt with his right hand and begin to strike me multiple time, on the right side of my face with his left fist, "HARD"! He rotates from that right into driving his left knee into the right side of my

1 rib cage.with MMA type strikes, very aggressively. As he was doing so, def.
2 Gamez returned, and joined in the assault along with Culum. .

3 33. Def. Gamez, dropped her full body weight into the meddle of my back on
4 the left side with all her force, then began striking me in the rleft side of
5 my back area, as she demonstrated her willingness to support def. Culum's con-
6 duct.

7 34. After def. Culum and Gamez had completely their joint assault upon me,
8 def. Gamez asked def. Culum what happened.He stated to her that the Plaintiff
9 attempted to strike him. Def. Gamez reminded Culum that [I] was still in hand-
10 cuffs. Def. Culum revised his statement to def. Gamez and said: that he used
11 his shoulder to strike him (Culum) in his chest.

12 35. Plaintiff was then placed into Administrative Segregation (Ad. Seg.) unit,
13 and issued two (2) Rule Violation Reports ("RVR"), charging [him] with two (2)
14 Battery's on Peace Officers). Both reports had been fabricated and/or exaggerat
15 -ed by the defendants.

16 36. Def. Pesce and Culum, along with the other defendants, acting in collus-
17 ion to cover-up their malfeasance.

18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100
101
102
103
104
105
106
107
108
109
110
111
112
113
114
115
116
117
118
119
120
121
122
123
124
125
126
127
128
129
130
131
132
133
134
135
136
137
138
139
140
141
142
143
144
145
146
147
148
149
150
151
152
153
154
155
156
157
158
159
160
161
162
163
164
165
166
167
168
169
170
171
172
173
174
175
176
177
178
179
180
181
182
183
184
185
186
187
188
189
190
191
192
193
194
195
196
197
198
199
200
201
202
203
204
205
206
207
208
209
210
211
212
213
214
215
216
217
218
219
220
221
222
223
224
225
226
227
228
229
230
231
232
233
234
235
236
237
238
239
240
241
242
243
244
245
246
247
248
249
250
251
252
253
254
255
256
257
258
259
260
261
262
263
264
265
266
267
268
269
270
271
272
273
274
275
276
277
278
279
280
281
282
283
284
285
286
287
288
289
290
291
292
293
294
295
296
297
298
299
300
301
302
303
304
305
306
307
308
309
310
311
312
313
314
315
316
317
318
319
320
321
322
323
324
325
326
327
328
329
330
331
332
333
334
335
336
337
338
339
340
341
342
343
344
345
346
347
348
349
350
351
352
353
354
355
356
357
358
359
360
361
362
363
364
365
366
367
368
369
370
371
372
373
374
375
376
377
378
379
380
381
382
383
384
385
386
387
388
389
390
391
392
393
394
395
396
397
398
399
400
401
402
403
404
405
406
407
408
409
410
411
412
413
414
415
416
417
418
419
420
421
422
423
424
425
426
427
428
429
430
431
432
433
434
435
436
437
438
439
440
441
442
443
444
445
446
447
448
449
450
451
452
453
454
455
456
457
458
459
460
461
462
463
464
465
466
467
468
469
470
471
472
473
474
475
476
477
478
479
480
481
482
483
484
485
486
487
488
489
490
491
492
493
494
495
496
497
498
499
500
501
502
503
504
505
506
507
508
509
510
511
512
513
514
515
516
517
518
519
520
521
522
523
524
525
526
527
528
529
530
531
532
533
534
535
536
537
538
539
540
541
542
543
544
545
546
547
548
549
550
551
552
553
554
555
556
557
558
559
560
561
562
563
564
565
566
567
568
569
570
571
572
573
574
575
576
577
578
579
580
581
582
583
584
585
586
587
588
589
590
591
592
593
594
595
596
597
598
599
600
601
602
603
604
605
606
607
608
609
610
611
612
613
614
615
616
617
618
619
620
621
622
623
624
625
626
627
628
629
630
631
632
633
634
635
636
637
638
639
640
641
642
643
644
645
646
647
648
649
650
651
652
653
654
655
656
657
658
659
660
661
662
663
664
665
666
667
668
669
670
671
672
673
674
675
676
677
678
679
680
681
682
683
684
685
686
687
688
689
690
691
692
693
694
695
696
697
698
699
700
701
702
703
704
705
706
707
708
709
710
711
712
713
714
715
716
717
718
719
720
721
722
723
724
725
726
727
728
729
730
731
732
733
734
735
736
737
738
739
740
741
742
743
744
745
746
747
748
749
750
751
752
753
754
755
756
757
758
759
760
761
762
763
764
765
766
767
768
769
770
771
772
773
774
775
776
777
778
779
780
781
782
783
784
785
786
787
788
789
790
791
792
793
794
795
796
797
798
799
800
801
802
803
804
805
806
807
808
809
810
811
812
813
814
815
816
817
818
819
820
821
822
823
824
825
826
827
828
829
830
831
832
833
834
835
836
837
838
839
840
841
842
843
844
845
846
847
848
849
850
851
852
853
854
855
856
857
858
859
860
861
862
863
864
865
866
867
868
869
870
871
872
873
874
875
876
877
878
879
880
881
882
883
884
885
886
887
888
889
890
891
892
893
894
895
896
897
898
899
900
901
902
903
904
905
906
907
908
909
910
911
912
913
914
915
916
917
918
919
920
921
922
923
924
925
926
927
928
929
930
931
932
933
934
935
936
937
938
939
940
941
942
943
944
945
946
947
948
949
950
951
952
953
954
955
956
957
958
959
960
961
962
963
964
965
966
967
968
969
970
971
972
973
974
975
976
977
978
979
980
981
982
983
984
985
986
987
988
989
990
991
992
993
994
995
996
997
998
999
1000

FIRST CAUSE OF ACTION
RETALIATION IN VIOLATION OF THE
FIRST AND FOURTEENTH AMENDMENT
FOR EXERCISING RIGHT TO PETITION THE
GOVERNMENT FOR REDRESS OF GRIEVANCE

37. Defendants Pesce, acting under color of state law and through CDCR's
policies, practices and customs, deprived Plaintiff of rights, privileges, and
immunities secured by the Constitution and the laws of the United States under
the First and Fourteenth Amendment, by subjecting him to, through his deliberate
indifference by retaliating against him for exercising his protected right to
ascertain redress. The action taken by the Plaintiff was protected conduct,

1 In which defendant Pesce took adverse actions against the Plaintiff for exercis-
2 ing that right, and thus, creating the causal connection between plaintiff's
3 protected conduct to request for a property receipt and a 602 form. this ad-
4 verse action taken by def. Pesce was done to deprive the Plaintiff from suc-
5 cessfully pursuing that protected right.

6 38. Defendant Pesce intentionally took retaliatory actions directly against
7 the Plaintiff, with deliberate, Malicious & sadistic intent to cause Plaintiff
8 irreparable harm, due to Plaintiff's persistence to pursue his right to file
9 a grievance against him [Pesce] to regain the tangible personal property.

10 39. Plaintiff had the right to request for a property receipt and a appeal
11 form; then to speak directly to a Sergeant, who was the supervising agent on
12 duty, was conduct well within the realms of his protected procedural due pro-
13 cess rights.
14

15 SECOND CAUSE OF ACTION
16 UNNECESSARY AND EXCESSIVE USE OF FORCE
17 RESULTING IN GREAT BODILY INJURY AND
18 FAILURE TO INTERVENE WHILE BEING PRESENT
19 AND WATCHING PLAINTIFF BE ASSAULTED
20 BY OTHER CORRECTIONS OFFICERS
21 VIOLATED HIS EIGHTH AND FOURTEENTH AMENDMENT RIGHT

22 40. Defendants Pesce, Kelly, Culum and Gamez, participated in the unnecessary
23 and excessive use of force, when they maliciously and sadistically used force
24 to cause [great] physical harm against the Plaintiff. No efforts were taken by
25 any of the other staff members standing by, to temper away from the severity of
26 the force that was applied upon the Plaintiff. The force used was completely un-
27 reasonably unnecessary and extremely excessive to the need.

28 41. The defendants used substantial force upon Plaintiff even though he used
nor offered any form of resistance against them when they begin using the force.

42. When def. Culum alleged that the Plaintiff was not in restraints when he
was instructed to remove his clothing was an understatement. The restraints had

1 been replaced upon Plaintiffs' wrist, while the Plaintiff was secured in the
2 holding cage the size of a casket, when def. Culum initiated the assault upon
3 the Plaintiff. Def. Gamez was no were in sight when def. Culum stated to the
4 Plaintiff: "If you give me any more problem, I'm gonna fuck you up nigger"!It
5 was only after def. Gamez had retrieved the scissors and was returning to cut
6 off Plaintiff's clothing, when she became aware of what had taken place in her
7 absence.

8
9 43. Def. Culum and Gamez acted with deliberate indifference when they acted
10 with the malicious and sadistic intent when they used force to inflict serious
11 harm upon the Plaintiff, then tightened the handcuffs around both wrist, to
12 cause additional pain and physical discomfort, and cutting off the blood
13 circulation in the wrist and hand. The wrist restrains remained on [my] wrist
14 and ankles for about four (4) hours or more, until Plaintiff was taken to Ad.
15 Seg., even after begging several staff members, including Sgt. Clay and Lt.
16 Quiring to loosen them, in a polite and respectful manner.

17 44. Plaintiff lost some feeling and felt numbness in both his hands and wrist
18 lasting for about a year or so in durations, which is about the time it took
19 before [he] was able to feel close to normal range of feelings in them.

20 45. Plaintiff also lost the capability to move or walk without the need of a
21 wheelchair for several months, at which time he was switched from a wheelchair
22 to another walking apparatus.

23 46. Plaintiff sustained some very serious physical impairing injuries as a
24 direct result of the force that had been maliciously inflicted upon him by the
25 defendants, with greatest intent was to cause as much physical pain as possible.

26 Defendant Sgt. Clay and the remaining defs. that were present during the time
27 these constitutional infractions were taking place, chose to stand by and watch
28 what their co-worker were doing to the Plaintiff, and failed to intervene when

they knew or should have known that the Plaintiff was being subjected to brutality as he was being assaulted by thier co-workers.

47. I informed def. Sgt. Clay of the fact that the handcuffs were too tight on my wrist and was cutting off the blood supply to my hands; that they were feeling numb and needed to be loosened, and he completely ignored my plea for help to remedy the pain and suffering I was enduring. In fact, the handcuffs remained tight that way up until the time Plaintiff had been excorted to Ad. Seg., at which time an ad. seg. officer removed them.

48. Defenants Sgt. Clay and Lt. Quiring were the supervising officials on duty during the time of the incident, and were responsible for ensure that the staff members under their direct supervision were adequately trained to perform the duties and functions in which they had been assigned to perform, and to take the appropriate actions when they were not following or in compliance with the proper protocol and procedures.

49. Defendants Sgt. Clay and Lt. Quiring failed in their duties to monitor and/or supervisory responsibility to ensure they were following policies; and to adequately supervise, train, or control by supervision, as the above named def. acting in collusion, either directly or indirectly, assaulted, or failed to intervene to temper the extent in which their co-workers proceeded to, inflict physical harm upon the Plaintiff, then fabricate criminal charges against the Plaintiff, and falsify rule violation report, and/or crime incident reports pertaining to the events that had actually taken place, and to aid in the cover- up of criminal misconduct.

THIRD CAUSE OF ACTION
CIVIL CONSPIRACY UNDER FEDERAL LAW AND DENIAL
OF DUE PROCESS RIGHTS IN VIOLATION OF
THE FIFTH AND FOURTEENTH AMENDMENT RIGHTS

50. Plaintiff submitted his first Inmate appeal as a "STAFF MISCONDUCT COMPLAINT" on June 2, 2020, immediately following the day the incident occurred, to protect

1 the integrity of his claim and to defend against the false criminal charges be-
2 ing filed against him.

3 51. Plaintiff exhausted his administrative remedies all the through to the
4 final level of review, which had been GRANTED at the Director's level.

5 52. The appeal was returned to MCSP, administrative officials, with specific
6 instructions as to how they were to proceed with the ongoing investigation.

7 53. Defendants Holmes, Moseley and Covello, along with the other defendants
8 acting directly or indirectly with each other, entered into a civil conspiracy
9 and agreement, to violate the civil rights of Plaintiff, by engaging in the con-
10 duct, acts, and omissions alleged herein by lawfully refusing to properly fol-
11 low the directives of their superiors, to investigate the use of force and the
12 failure to act and/or protect Plaintiff from any other civil violation that had
13 taken place, in an attempt to cover-up the use of force against the Plaintiff,
14 subjecting Plaintiff to cruel and unusual punishment, bringing false charges
15 against the Plaintiff in criminal court, alleging that he committed the criminal
16 act of "BATTERY ON A PEACE OFFICER", on two (2) seperate occassions during the
17 same time of events, in order to cover-up the malfeasance of four (4) of the
18 defendants named in this complaint.
19

20 **FOURTH CAUSE OF ACTION**
21 **VIOLATION OF CIVIL RIGHTS AND THE DENIED**
POST-DEPRIVATION OF DUE PROCESS REMEDIES

22 54. In addition to the misconduct alleged herein, said conspiracy and agree-
23 ment is evidence by the fact, inter alia, that said defendants: (a) ordered,
24 directed, supervised, authorized, aided, abetted, approved, ratified and/or de-
25 liberately and knowingly failed, refused and/or refrained from intervening in
26 or stopping the wrongful conduct alleged herein; and/or (b) engaged in conduct
27 alleged herein that was unlikely to have been undertaken without an agreement.
28 None of the individually named defendants would have unreasonably violated the

Plaintiffs's constitutional rights but for the collusional agreement with the other individually named defendants.

55. Defendants Pesce, Kelly, Culum Gamez, Clay Quiring, Holmes, Moseley and Covello are legally responsible for, and indeed proximately and legally caused the damages alleged herein for the reasons alleged above and incorporated herein by reference.

56. Defendants Pesce, Kelly, Culum and Gamez, battered Plaintiff, causing his long term injuries, in which is still being suffered upon til this date, as herein above allegations, entitling him compesatory and punitive damages according to proof as to the individual defendants action.

57. As direct and proximate cause of the aforementioned acts of defendants Pesce, Kelly, Culum and Gamez, Plaintiff was seriously injured as set forth above.

58. Defendants conduct was extreme and outrageous, and caused Plaintiff to sustain severe emotional distress, by subjecting him to false criminal charges being filed against him in court, all to Plaintiff's damages as hereinabove alleged.

59. As a direct and proximate cause of the aforementioned acts of defendants, Plaintiff was injured and continue to suffer repercussions as set forth above.

60. Plaintiff injuries and any future injuries he may undergo, entitles him to compesatory and punitive damages according to proof as to the individual defendants, and outcome of the false criminal charges currently pending before the superior court in case number 20-CR-29878.

61. Staff also took retaliatorial reprisals against Plaintiff when they stole or threw away his personal legal books and other property when they packed up his property took him to Ad. Seg. on 6/2/20. Plaintiff appealed this issue, in which

prison officials failed to adequately investigate at the institutional level.

62. The director's level failed to render a timely investigation into the grievance, upon receiving the timely submitted appeal. In which def. Moseley sent Plaintiff a memorandum, which stated: "Subject: TIME EXPIRED RESPONSE FROM THE OFFICE OF APPEALS". The memorandum lacks the date in which it was issued, however, the "Appeal Claim Decision Response from the director, is dated 03/11/2021, in which it clearly shows that the appeal was received by them on 12/28/20. Leaving them plenty of time to investigate, or request an extension if needed. Log# 54398.

63. These actions performed by CDCR's administrative executives clearly demonstrates, that they've done everything possible to subterfuge Plaintiffs' efforts to ascertain redress and resolve this issue, as well as all the other factors set forth in this complaint.

64. Based on every actionable claim set forth in this complaint, it is clearly obvious that a great injustice has been committed here, and that MCSP officials has done everything within their power to undermine Plaintiffs attempt at ascertaining redress and complete justice in this matter. It is left up to this court to see that he receive what the law warrants justice.

REQUEST FOR RELIEF

1. Plaintiff seeks compensatory general and special damages in the amount of Three-hundred thousand dollars (\$300,000.00);
2. and, punitive damages against each of the individual defendants in an amount sufficient to punish them for their individual conduct that violated the Plaintiffs civil rights, and set a clear example of said defendant, and deter others from engaging in similar conduct;
3. Reasonable attorney's fee, expenses and cost;

1 4. Expungment of the falsified Rules Violation Reports Log numbers 7003864 and
2 7003865; and

3 5. Such other and further relief the Court deems proper.
4

5 **DEMAND FOR JURY TRIAL**

6 Plaintiff hereby demand a jury trial on all issues so triable.
7

8 Dated: June 27, 2022.
9

10 Respectfully submitted,
11

12 
13 Dwayne S. Montgomery, Plaintiff
14
15
16
17
18
19
20
21
22
23
24
25